

ASSESSMENT in Ontario

IMPORTANT NOTICE

This publication explains the Environmental Assessment Act as it existed before January 1, 1997 and only applies to environmental assessments carried out under that version of the Act. This publication should be used for reference only.



Ontario

An Introduction to **ENVIRONMENTAL ASSESSMENT** IN ONTARIO

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Ministry of Environment and Energy

What is the Ontario Environmental Assessment Act	3
What does the Environmental Assessment Act apply to?	4
How does the Environmental Assessment Act work?	6
How does a proponent get people involved in an environmental assesment?	7
What is the Environmental Assessment Act's review & approval process?	8
What are Class environmental assessments?	11
Who else is involved?	12

This brochure is one in a series of publications about environmental assessment in Ontario. It provides a very general introduction to Ontario's Environmental Assessment Act by providing answers to common questions and replaces the 1988 "Citizen's Guide to the EA Act".

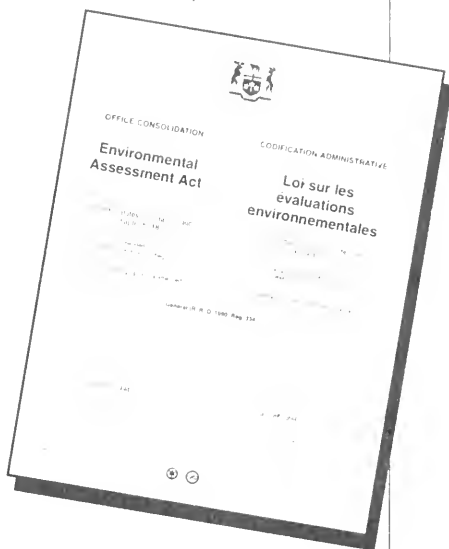
Other publications in the series provide more detailed information on Ontario's environmental assessment program and process. For a complete list of other publications, please contact the Ministry of Environment and Energy as identified on the last page of this document.

Environmental Assessment or **EA** is a decision-making process used to promote good environmental planning by assessing the potential effects of certain activities on the environment. In Ontario, this process is defined and finds its authority in the **Environmental Assessment Act** (**EA Act**), a law which came into force in 1976.

The purpose of the *Environmental Assessment Act* is to provide for the:

- **protection;**
- **conservation;** and
- **wise management** of Ontario's environment.

To achieve this, the EA Act ensures that environmental problems or opportunities are considered and their effects are planned for before development or building takes place. One of two planning processes (**Individual** assessments or **Class** assessments) should be followed to ensure the requirements of the Act are met; each is described in the latter part of this document. The next few pages will describe how this legislation works, who it affects and who is involved.



What does the Environmental Assessment Act apply to?

The EA Act applies to most public sector **undertakings** (the proposed project or activity) and to some private sector undertakings.

Public sector undertakings

All **public sector undertakings** are subject to the EA Act unless they have been specifically exempted. Public sector undertakings are those of:

- Ontario Government **Ministries** and **agencies**;
- Ontario **municipalities**;
- public **utilities** (such as Ontario Hydro); and
- **Conservation Authorities**.

Public sector undertakings, often **infrastructure** developments, include such things as public roads and highways, transit facilities, waste man-

agement facilities, sewage and water works, electrical generation and transmission facilities, and flood protection works.



*Environmental Assessment Act applies to
Department of most of Ontario's roads
and highways.*

The **Minister** of Environment and Energy **may**, with Cabinet's approval, **exempt** public sector undertakings from any or all of the requirements of the EA Act.

However, the Minister must

be satisfied that an exemption would be in the public interest. The Minister may impose terms and conditions to ensure that the environment will be protected when the projects or activities are developed.

Private sector undertakings

The EA Act does not generally apply to **private sector undertakings**, that is projects of non-government organizations, companies and individuals. However, Cabinet may pass regulations **designating** individual projects or general types or classes of projects as being **subject to the Act**. For example, one regulation makes **certain major private sector infrastructure projects** subject to requirements under the Act similar to their municipal counterparts. Most private sector landfill proposals also are designated under the EA Act.



Most private sector undertakings are not subject to the EA Act.

Anyone **may request** that the Minister of Environment and Energy **subject a private sector** undertaking to the requirements of the EA Act. The Minister, with Cabinet approval, makes the decision on whether or not to **designate** an undertaking as one to which the act applies.

How does the Environmental Assessment Act work?

The EA Act broadly defines the “**environment**” to include the **natural** environment (meaning the air, land, and water or any combination of these in Ontario) as well as the **social, cultural, built and economic** aspects of the environment.



The EA Act [subsection 5(3)] requires that the **proponent (the person, government body or**

designated corporation proposing the undertaking) prepare an **EA document** describing:

- the proposed **undertaking** and its **purpose** (often described as a **problem or opportunity**);
- the different **methods** of carrying out the undertaking;
- the **alternatives** to carrying out the undertaking (including “doing nothing”);
- the likely **environmental effects** of the undertaking and **alternatives** examined;
- the ways to **mitigate** (prevent, change, lessen or remedy) negative environmental **effects** or enhance positive effects; and
- the environmental **advantages and disadvantages** of the undertaking and its alternatives.

Proponents are expected to use the EA process to assist them in deciding whether to carry out an undertaking and in selecting a design with minimum adverse effects on the environment.

How does a proponent get people involved in an Environmental Assessment?

Proponents are **encouraged** to develop a plan of **how** they propose to carry out their environmental assessment including how they will consult with the public. This preliminary plan is known as an **Environmental Assessment Proposal or EAP**. An EAP is made public and is used for discussion with anyone who has an interest in the EA. **Proponents may** choose to prepare:

- **individual EAPs** specifically prepared for each undertaking or
- **sectoral EAPs** which can be prepared for similar types of undertakings to describe the planning processes to be used for all projects within that sector of undertakings. Examples of sectoral EAPs may include those prepared for municipal waste EAs or electrical transmission projects.



Consultation is crucial in preparing the environmental assessment document.

Proponents are encouraged to **consult** in all phases of their planning process with anyone potentially affected by the project. This would include those who could provide valuable information or whose interests could be affected by the alternatives being considered and decisions being made. Such groups may include area residents, public interest groups, government ministries and agencies, municipalities, businesses, First Nations and members of the general public.

Early and appropriate consultation is encouraged and is known as **pre-submission consultation (PSC)**. PSC can take many forms including meetings, circulation of draft EAs and the formation of steering committees. Through consultation, proponents should be better able to **identify and evaluate potential environmental concerns**. When people are consulted early in the process **issues can often be identified and resolved** as part of the proponent's planning process rather than later on at the more costly review and approval stage.

What is the Environmental Assessment Act's review and approval process?

Before building or starting an undertaking which is subject to the EA Act, the proponent must receive an approval under the Act. The EA Act sets out a review and approval process for individual EAs which is summarized below. Numbers beside the text correspond to the steps indicated on Figure 1, page 10.

The formal review and approval process begins when a **proponent submits a document** known as an "environmental assessment" (EA) to the Minister of Environment and Energy. Proponents are encouraged to prepare an EAP or follow a sectoral EAP and initiate consultation (see PSC in previous section) prior to commencing their planning process and preparing an EA document.

On receiving an EA document, the Minister sends it to the Ministry's Environmental Assessment Branch. This branch is responsible for co-ordinating a **review of the document**. In co-ordinating the review, the branch **solicits comments** on the EA document from various government ministries and agencies, municipalities, First Nations and the general public. The review highlights technical deficiencies as identified by review agencies as well as how requirements of the Act have been addressed. Where conflicts arise, the ministry may assist by providing mediation or arbitration.

Once the review has been carried out, a Notice of Completion of the Review is made public.

Once the above notice has been given, the public has a minimum of **30 days to make written submissions** to the Minister regarding the proposed undertaking, the environmental assessment and the review. During that time, anyone, including the proponent, may make a **written request** to the Minister suggesting: (a) what issues are **outstanding**,

(b)how these might be resolved through specific **conditions of approval** and/or (c)whether and why a **hearing** should be held by the Environmental Assessment Board.

4

The **Minister decides** whether to: **refer** the matter to a hearing Board, **to accept** the environmental assessment of the proposed undertaking and possibly impose conditions on any approval, **to amend and accept** the EA or to **order that further research** be undertaken.

5

Upon **accepting** an environmental assessment, the Minister **notifies** the proponent and anyone who has made a written submission. Within 15 days they may make further **submissions** to the Minister regarding the **approval** of the undertaking, **conditions which should be imposed** or they may **request a hearing**.

The Minister may make a joint decision on acceptance and approval (i.e. combine Steps 5 & 6) if no submissions are received in Step 3.

6

The **Minister may** refer the matter for a **hearing**. If no hearing is required, the Minister may give **approval** to proceed **with or without conditions** or **refuse to give approval** to proceed. Cabinet must ratify the Minister's approval.

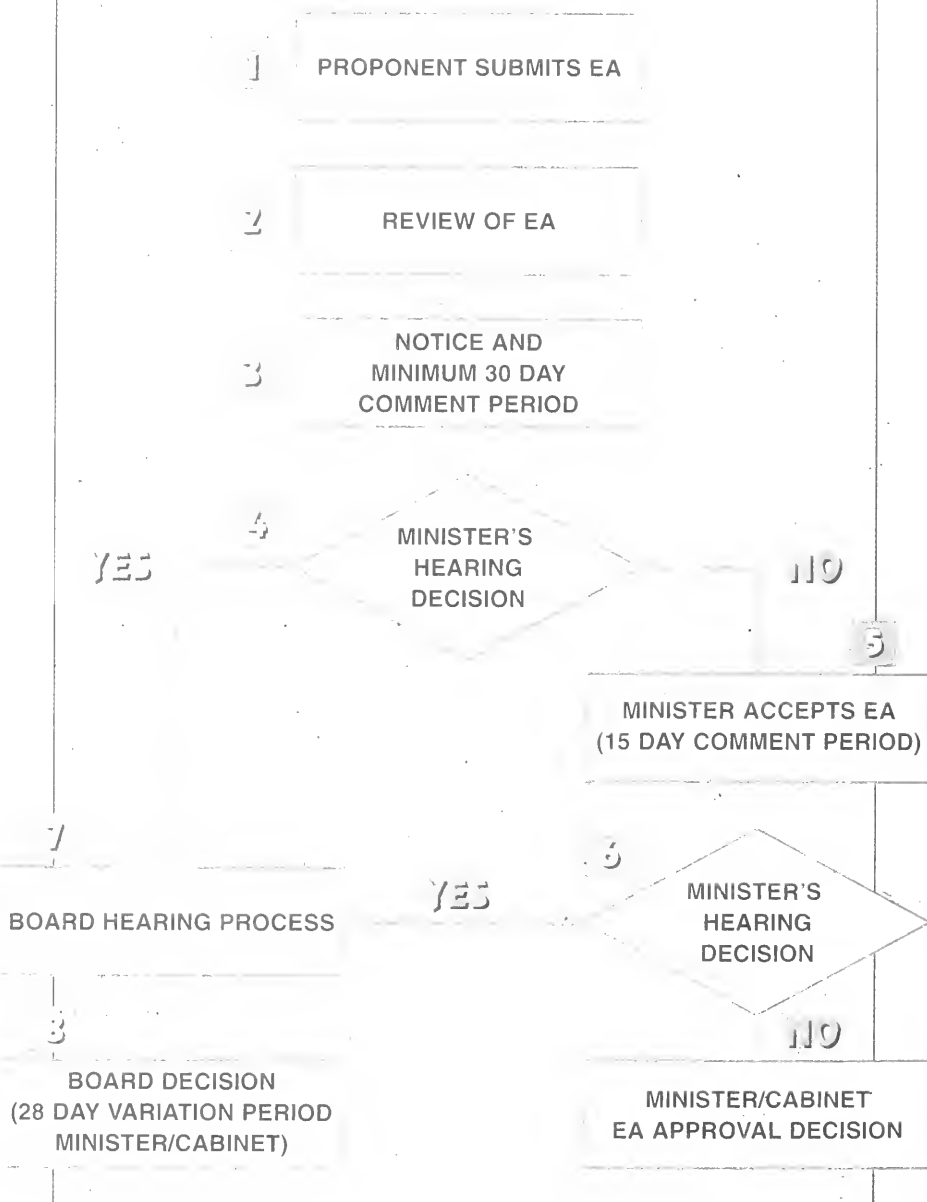
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If the Minister refers a matter for a hearing under Step 6, the hearing board must schedule and provide notification of the **public hearing**. The board may jointly **accept and approve, refuse approval or approve** the undertaking, with or without conditions.

8

A **decision by the board** goes into effect within 28 days; unless the Minister, with Cabinet approval, varies or changes the decision or requires the board to hold a new hearing.

Figure 1 - This chart represents a simplified version of the EA process



What are Class Environmental Assessments?

Not all undertakings that are subject to the EA Act need to go through the Act's review and approval process as previously described. There are some projects which are:

- relatively small in size and scale;
- carried out routinely; and
- have predictable and mitigable environmental effects

and therefore, do not warrant an individual EA. These are known as **class EA projects**.

The **class EA parent document** is one which sets out a **planning process to be followed for class EA projects**. The class EA parent document is **submitted and reviewed under the previously described review and approval process**. Approval, if granted, applies to the entire **class of undertakings** and the **procedures described in the document**. Thus, a proponent who receives **approval for a class of undertakings does not need to obtain separate approval** under the EA Act **for each specific project**, provided the parent document is adhered to for the specific project.

To ensure that environmental effects are considered for each project, proponents are required to follow the planning and design procedures set out in the approved class EA parent documents. EAPs, as defined earlier, are not necessary for class EAs. Occasionally, there may be **projects** carried out in accordance with a class

EA parent document that warrant being **individually dealt with** through the Act's review and approval process. All class EA parent documents include a **bump-up** provision whereby the **Minister may**, at the request of any affected or interested party, **require that an individual EA** be prepared for any projects within the approved class of undertakings or **refuse such a request**.



Projects covered by Class environmental assessments include transit facilities.

Who else is involved?

Environmental Assessment Advisory Committee

Before deciding whether or not to exempt or designate undertakings under the EA Act, the Minister may request **advice** from the **Environmental Assessment Advisory Committee**. Committee members may also be requested to advise the Minister on other EA program areas. In developing its advice, the Committee may, at the Minister's request, consult with potentially affected and interested parties and may hold public meetings. The Committee's advice is provided in a report to the Minister which is usually made public once the Minister has made a decision on the matter.

Boards

The **Environmental Assessment (EA) Board**, at the request of the Minister, normally conducts public hearings under the EA Act. However, upon submission of an EA document, proponents may request the board

refer the EA to a hearing before a **"Joint Panel"** established under the **Consolidated Hearings Act**. The *Consolidated Hearings Act* is another law of the Province of Ontario that provides for holding a single hearing in cases where **hearings have**



been referred to the board by the Minister and would be required under more than one piece of legislation (such as the *Planning Act* and the EA Act).

Through the *Intervenor Funding Project Act*, **funding** may be available to assist those who wish to participate in a hearing. Applications for funding may be made to either the EA Board or joint panel prior to the

commencement of a hearing. Upon receiving funding applications, the board appoints, from amongst its members, a funding panel to review the applications and decide whether or not and how much funding should be provided. Proponents are responsible for providing the funding as awarded by a funding panel. The EA Board of joint panel can also indicate which participants should receive money to cover their costs for a hearing.

Federal Government

Undertakings of the Federal Government are **not subject** to Ontario's EA Act. The federal government has its own environmental assessment requirements for undertakings with which they would be involved, such as those requiring federal licences or approvals, financial assistance, federal proponentcy or federal land. Some undertakings will require both federal and provincial approval. Canada and Ontario work together to harmonize those requirements.

Information on the Environmental Assessment Act and the Environmental Assessment Regulations can be found on the Government of Canada's website at <http://www.ec.gc.ca/eeaa>.

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